


Lincoln 26



A request made by General Fry to the investigating committee for the privilege of preparing and submitting by himself or counsel, a written plea, was not granted.

The following letter of instructions was, however, addressed by General Fry to his counsel, Hon. A. G. Riddle, on the eve of the oral plea, which Mr. Riddle made in compliance with the requirements of the committee. It gives a general but brief resume of the grounds on which General Fry rests his charges against Mr. Conkling, and of his defense against the charge which Mr. Conkling incidentally brings against him.



Digitized by the Internet Archive  
in 2012 with funding from  
The Institute of Museum and Library Services through an Indiana State Library LSTA Grant

HON. A. G. RIDDLE,

ATTORNEY, ETC.,

*Dear Sir*:—As you well know, from the time the Congressional Investigation into the charges brought by myself against Hon. Roscoe Conkling took the form of rigid legal proceedings, I have left the conduct of the matter in the hands of yourself and my assistant (General Jeffries), as my counsellors and advisers. I have been present very little during the protracted sessions in which this case has been considered ; content to leave it, as presented by you, to the just judgment of the honorable members composing the committee. I deem it proper, however, on the eve of closing that branch of the case which directly affects Mr. Conkling, to make a brief review of it, as some aid to you in the task of summing it up before the committee. Had the committee been pleased to allow written pleas, I should have been glad to state my views in extenso ; but, as this has been refused, and as the oral plea has to be made to-morrow, I am compelled to make a rapid and condensed *resume* of the points of the case in a note to you, —hoping that, however hastily thrown off, it may aid you somewhat in the elaborate review of the testimony which it will be your duty to make as my counsel. I am compelled to do this under the disadvantage of not knowing the precise terms of the testimony adduced before the committee, and relying on the running notes kept by General Jeffries during the examination of the witnesses. I formally applied to the committee for a copy of the record, the testimony having been phonographically reported, and offered to pay the expense of transcribing ; but this was refused. The reason for refusing is unknown to me, and I do not mention it now as a complaint, but simply to explain the disability under which I labor in the review which I am now hurriedly undertaking.



The origin of the difficulty which produced this investigation, as you will remember, was a speech made by Mr. Conkling, in the House of Representatives, on the 25th of April, assailing my character personally and officially. The occasion which called forth the attack was the report by the Military Committee of a section in the Army Bill continuing the Provost Marshal General's Bureau as a part of the military peace establishment. Mr. Conkling's assault, unprovoked and uncalled for, was repelled with warmth by a member of the Military Committee, Mr. Blaine, of Maine, who very generously defended my character. The assault was so virulent in its tone that I felt compelled to notice it, and I accordingly addressed a letter to Mr. Blaine, thanking him for his timely and effective defense and reviewing, with some plainness of speech, the personal and official relations between Mr. Conkling and myself. This letter was a private one, though I designed to have it made public in some form. It was deemed proper by Mr. Blaine, however, to cause the letter to be read in the House, as a part of a speech he made on the 30th of April, in vindication of himself against the charge made by Mr. Conkling, in the first debate between them, of his having stated what was false. It was not in my power to have the letter read in the House—it was originally prepared with no such intention—and I presume the honorable member who procured its reading there, has no desire to evade any of the responsibility properly pertaining to the act. In that letter I made the charges, which have, since its reading in the House, been the subject of investigation,—an investigation called for by Mr. Conkling, and neither sought for nor avoided by me. I did not consider my personal or official reputation so damaged by anything Mr. Conkling could say as to demand or need an investigation by Congress or any other branch of the Government. Mr. Conkling thought differently of the case, however, from his stand-point; and, at his earnest and urgent request, a committee of investigation was granted by the House, and five honorable gentlemen appointed to conduct it.

At the first meeting of the committee, I submitted a state-

ment, in writing, designed to make the investigation as brief, compact, and direct as possible ; but Mr. Conkling objected and insisted on having everything conducted by sharp rules of evidence, taking advantage of every turn, and proceeding in a manner which rendered legal advice necessary to me. I accordingly solicited your aid, since which time, as already remarked, I have left the case to yourself and General Jeffries.

The charges brought by me against Mr. Conkling were substantially *three* ; though some subordinate and inferential ones might be included in my letter.

I. The first was, that, while a member of Congress, he had taken the position of Judge Advocate of a General Court Martial, performed the duties thereof and received pay (\$3,000) for the same. I may remark here that the \$3,000, as appears in evidence, was besides his expenses, he having been paid \$280 in addition, under that head. It is shown in evidence that by an official order in due form from the Secretary of War, he was appointed Judge Advocate of the Court ; he was duly sworn in as such ; he performed all the duties of the office ; he certified the proceedings ; he certified the vouchers on which the expenses of witnesses were paid from the Treasury of the United States ; he summoned and swore the witnesses ; and, in short, did everything which a Judge Advocate could do by virtue of his office. When the Court was cleared for deliberation and all counsel excluded, he remained as official adviser of the Court. Finally, by his official management as Judge Advocate, the Court was commenced, and, having been sworn as such the trial was had, conviction wrought, the sentence executed. The duties were performed between April 3d and November 9th, 1865 ; and, at the latter date, he was paid for his services \$3,000, besides expenses, as already stated. Three weeks later, on the first Monday in December, 1865, Mr. Conkling was admitted to his seat in Congress, for the term *beginning March 4th*, 1865, and drew his pay, at the rate of \$3,000 a year, exclusive of mileage, stretching back to March 4th, and covering the whole time he was employed and paid as Judge Advocate. All this is



in evidence of the most ample and cumulative character ; and, therefore, my first charge against him is fully sustained. I said in my letter, that I left others to decide whether his taking pay for two offices at the same time was a violation of the letter or the spirit of the Constitution. That decision rests primarily with the Committee and ultimately with the representative body of which Mr. Conkling is a member. But I trust you will not fail to call the attention of the Committee to the numerous precedents applicable to the case,—precedents which have been growing in number and strength from the foundation of the Government, and all of them adverse to Mr. Conkling's right to take pay for the two offices, or for discharging the duties of the two for the same period of time.

Mr. Conkling, as you will remember, introduced the Hon. Secretary of War to prove that he had a right to be employed as Judge Advocate, and to discharge the duties and draw the pay. I hope you will not dispute this. Indeed Mr. Conkling might have taken this point for granted ; for the question at issue seems to be, not whether Mr. Conkling had the right to take pay for the duties of Judge Advocate, but whether he had the right afterwards to take pay for the same period of time as *a member of Congress*.

The House of Representatives decided, during the Thirty-eighth Congress, that Benjamin F. Loan and Green Clay Smith, having been paid as brigadier generals after March 4th; when their Congressional term began, could not be paid for the same time as Representatives. The logic is not apparent that would deny the pay to a brigadier general and accord it to a judge advocate, or the person discharging the duties of one.

Since Mr. Conkling has sought to justify himself in accepting double pay for the same time, I trust you will bring to the attention of the Committee the very many points of law bearing on the case,—the numerous statutes that forbid it,—the great public policy that discountenances it,—and the opinion of many eminent men, especially Attorney General Wirt, in condemnation and denunciation of it. I but suggest these points, leaving your more fruitful knowledge



of the law to give them appropriate illustration and enforcement.

Mr. Conkling showed extreme sensitiveness at my having referred, in a tone of irony, to the \$3,000 as a "*modest fee*" for the services he performed as judge advocate. To justify himself, he invoked the testimony of such eminent counsellors as Edwin M. Stanton and Reverdy Johnson as to the reasonableness of the charge, and he offered to bring Caleb Cushing and Charles O'Connor to prove the same. It was freely admitted that the fee would be, at any time, very reasonable and very moderate for any one of the distinguished counsel named. Gentlemen of their great professional eminence are justly expected to receive large fees for their time and their counsel, and it is certainly an amusing, if not suggestive, illustration of Mr. Conkling's weakness, to see him coolly rate himself as the professional peer of the four eminent jurists named.

II. The second charge against Mr. Conkling contained in my letter was, that he was as zealous in "preventing prosecutions at Utica as he was in making them at Elmira," and that "I wanted exposure at both places, while he wanted concealment at one."

In proof of this you will find a connected and, I think, irrefragable series of facts in the official papers sent by me to the Committee, many of which, I learn, Mr. Conkling strove to have excluded from the record, and I am not specifically advised as to the extent of his success in that effort. My suggestions to you are on the basis that those official papers are the most legitimate and pertinent testimony,—necessarily reliable and beyond the charge or suspicion or possibility of being made up, as oral testimony may be, for the occasion.

In Mr. Conkling's original letter of appointment, dated April 3d, issued by order of the Secretary of War, he was authorized "*to investigate ALL CASES of fraud in the Provost Marshal's Department of the Western Division of New York, and all misdemeanors connected with recruiting.*" His authority was, therefore, plenary, positively without limit, except by the geographical bounds of the Western

Division of New York. Utica was included in this Division, and the very day Mr. Conkling was appointed, his attention was directed to the alleged misdemeanors on the part of the Enrolment Board of the Utica District, in consequence of which the Board had been suspended from duty a few weeks before. It is in evidence that Mr. Conkling was made acquainted with the report of Major Luddington of an inspection of that office, which report recited: "I respectfully recommend that every member of the Board of Enrolment of the Twenty-first District of New York be dismissed from the service, and that the money in possession of Captain Crandall (Provost Marshal) be seized." Also, with the report of the commander of the Sub-Rendezvous at Auburn, in which that officer, in speaking of the recruiting service in the Twenty-first District of New York, says:—"Men rotten with venereal disease, totally unfit for any duty, are passed by the surgeon and sent here for duty. Nintenths of the recruits sent here from that office, are the most worthless set of scoundrels you ever put your eyes upon." Also, with the protest of Colonel N. G. Axtell, 192d Regiment N. Y. Volunteers, against the receipt of men recruited at Utica in which he says that the recruits mustered at Utica "are, without doubt, bounty-jumpers and should not have been mustered by any intelligent mustering officer." This evidence placed in the hands of Mr. Conkling would, it is to be supposed, have enabled him to prosecute to a speedy termination the charges made against the Utica office, he having been invested with full power touching the investigation of frauds and misdemeanors in that and every other district in the Western Division of New York. On the day of his appointment, April 3d, after "carefully reading" all this evidence, Mr. Conkling filed in the War Department a letter, as follows:

"WAR DEPARTMENT,  
Washington City, April 3d, 1865.

"Having been authorized and requested by the Secretary of War to examine certain transactions in the Bureau of the Provost Marshal General, relating to the Western Division of the State of New York, I have the honor to state that I have carefully read all the papers furnished me as on file, touching the Provost Marshal of the Twenty-first District, and, having



"done so, from the contents of said papers, as well as from my knowledge of the facts, and of the men connected with them, I advise and recommend that the order suspending Captain Peter B. Crandall and the other members of the Enrolling Board be revoked, and that said Board be reinstated.

(Signed)

"ROSCOE CONKLING."

Mr. Conkling, by taking cognizance of the Utica case, and giving it an official examination and making an official recommendation in relation thereto, is certainly estopped from alleging, as he has since attempted, that he had no jurisdiction of the case. Not only was his authority ample and plenary in his original appointment,—which was never revoked, annulled, or in any way limited, while he held the position,—but he actually took official cognizance of the case and exercised authority over it. His recommendation to restore Captain Crandall was not approved, and he remained suspended; and Mr. Conkling with all these facts before him, does not pretend that he ever attempted to do anything towards initiating proceedings against the Utica officials who were resting under the charges heretofore enumerated. The case was wholly under his cognizance, he, *and he alone, under the circumstances*, could prosecute or prevent prosecution, *and he did not prosecute*;—hence my charge, that he was as zealous in preventing prosecutions "at Utica as he was in making them at Elmira," and that "I wanted exposure at both places, while he wanted concealment at one." I submit that the official papers sustain my allegation. If he did not wish to prevent prosecutions at Utica, why did he not make them? That is for him to show. I have shown that he was amply empowered to prosecute, that the Utica case was especially and emphatically brought to his notice and that he refused or failed to institute prosecution. Mr. Conkling's explanation, in his speech of April 30th, reported in the *Globe* (which I understand is in evidence), was that the Elmira case absorbed so much of his time that, when it was through, he "declined to go further," (not for want of authority, but because he thought his poor share was done), and that these long investigations were interfering with his private business; but not being entirely satisfied with this apology, he afterwards,



before the committee, took the ground that his appointment was only to prosecute the Haddock case at Elmira, in the face of the fact that the very wording of his appointment authorized him to "investigate *all* cases of frauds in the Provost Marshal's Department of Western New York," and in the face of the additional fact, that he actually did take cognizance of the Utica case and found official recommendations thereon.

In support of his last taken position, that he was only authorized to prosecute the Haddock case at Elmira, he introduced Secretary Stanton and the late Assistant Secretary Dana. Both these gentlemen, I believe, stated that it was their understanding that Mr. Conkling was only to prosecute the case of Major Haddock. Their recollections—especially that of Secretary Stanton—were not distinct or specific on the point; but they spoke rather of their *impressions* being that way. Such an impression would not be at all extraordinary under the circumstances, in view of the fact that Mr. Conkling did confine his efforts very zealously to the Elmira case; that he failed to prosecute the alleged frauds at Utica and elsewhere in his Division. Indeed the Elmira case was so magnified and placed in such prominence by Mr. Conkling, that the Secretary of War, who could not be expected to remember the details of official papers in all the Bureaux, would very naturally come to have the impression that the prosecution of Haddock was the sole purpose of Mr. Conkling's appointment. And I submit that the creation of this impression is but a striking proof, in a striking form, of how completely Mr. Conkling succeeded in making prosecutions at Elmira and preventing them at Utica.

In this hurried glance at the facts sustaining my *second* charge, I am compelled to omit many points of force and pertinence. You will doubtless know where to refer to them in the official papers submitted; and I beg that you will amplify them in the manner that best commends itself to your judgment. Upon a full review of all the facts, I think my charge is sustained by evidence of the most comprehensive and incontrovertible character. Mr. Conkling's

original cognizance of the Utica case ; his admitted knowledge of the charges against the Enrolment Board ; his failure to do anything in the way of prosecution at that point ; his putting forward one excuse for this failure in his speech in the House, and his assuming an entirely different ground before the committee, are suggestive points, which you will readily group together and expose.

III. The third and only remaining charge contained in my letter was, that there had been quarrels between Mr. Conkling and myself.

I do not propose to spend much time, nor do I wish you to engross much of the committee's attention in *proving* that to be true. I think it will be admitted that the state of feeling between Mr. Conkling and myself for some time past has not been cordial ; and that the committee will hardly desire to spend time in searching out how the differences began, how they ripened into ill-feeling, and how they finally became so bitter on Mr. Conkling's part as to lead him to make an extraordinary assault on my character from his place in the House of Representatives. I believe courts are justified in assuming certain conclusions without asking proof in detail ; and I think one of the safe conclusions for this honorable committee to adopt is, that since I insisted on removing one of the Provost Marshals in Mr. Conkling's district, on charge of fraud, and suspending another for alleged misdemeanors, and refused to restore either on his application, Mr. Conkling has been my enemy, intent on injuring me, and wielding his power and influence to that end. The correspondence in evidence is presumed to be ample on this point ; how far it may be necessary to refer the committee to that correspondence, I leave to your better judgment.

Having disposed of the *three principal* assertions in my letter, you may deem it worth while to glance at the minor and incidental charges, to which I will very briefly allude. I referred to a rumor that Mr. Conkling had received \$5,000 from his district for his services in the Elmira case ; but I did not state it as a fact within my knowledge. I also stated, in substance, that Mr. Conkling,—if he spoke truly



against me in the House of Representatives,—had been false to duty as judge advocate, in not preferring charges against me. I simply repeat my position on this point. My charge was an alternative one, involving a matter of opinion touching official duty, rather than any specific fact, and I do not see that it is important one way or the other. So far as testimony could be introduced, bearing on such a point, it would have to be made up largely of the rules, practices, and moral convictions of military officers, situated as Mr. Conkling was while acting as judge advocate. I do not hesitate to express the opinion that the vast majority of officers would have deemed it their imperative duty to file charges against me, had they come into possession of the facts impeaching my official integrity, as Mr. Conkling alleges he did. And with the testimony of Mr. Stanton in support of this view and that of Mr. Dana against it, I leave the case.

You will necessarily refer to the testimony of Mr. Dana, late Assistant Secretary of War. I wish you to treat it as irrelevant. He took issue with me on certain statements of an immaterial nature; and, without stopping to analyze his testimony, I simply pass it over as not pertinent to the inquiry submitted by the House to the committee. I stated that Mr. Dana had vested Mr. Conkling, without Mr. Stanton's sanction, with extraordinary powers. Mr. Stanton states that he had given Mr. Dana power to confer all necessary authority; but did not, it seems, until afterwards, learn that he had issued authority which "*enabled*" an overhauling of telegrams in various offices, not specifically designated. Mr. Stanton states that he subsequently approved the action taken, and would have given more authority if necessary; but, as it was done without his direct *knowledge*, I was certainly sustained in my assertion, that it was without his "*sanction*." Sanction is not to be presumed, nor is it properly subsequent in its nature. It is specific and precedent. But I do not care to have you go into this at any length; for Mr. Dana is not on trial before this committee, and the charge does not affect Mr. Conkling, and it is in regard to Mr. Conkling that the committee is now conducting the investigation. Neither is it necessary



to spend any time on the discrepancy between statements in my letter and those made by Mr. Dana, touching the interview I had with Mr. Conkling. The affair is trivial in its nature and unimportant in its bearings ; and, I take it, the committee will not wish to spend time on such points. I state one thing and Mr. Dana a different thing, on points of no importance, relating to an interview that occurred a year and a half ago. Let it stand in that way.

I have thus briefly reviewed the charges contained in my letter. Of the principal charges, I maintain and re-assert, not only the substantial, but literal, correctness. Touching some of the minor and inferential statements, some discrepancy appears in the testimony ; but this affects only points of an immaterial nature, all of which I might readily yield, without injuriously affecting my position. And I remark, in closing this branch of the subject, that Mr. Conkling seems not so much to have questioned the substantial truth of my letter, as to have challenged my ability to prove my assertions by the sharpest technical rules of evidence, which he favored before the committee as the line of proceeding.

Having disposed of all the points involved in my letter, I desire you to treat at length the transaction generally known as the *Hoboken case*. There is no fact connected with it which I do not wish set forth fully and unreservedly. Mr. Conkling has introduced that case with the view of proving that I had been actuated by bad motives towards him, and that the animus of my letter is to be inferred from certain *alleged* facts in connection with that case, which he has industriously striven, but completely failed, to establish. I do not wish you to be satisfied with simply repelling what Mr. Conkling has sought to prove against me in this affair, but I trust you will turn that case, as it should be turned, against him, showing that he has striven to wound my reputation by testimony of a disgracefully unreliable character, and that his whole superstructure of attempted proof rests on the assertions of one Theodore Allen, who is proved, not only by all the circumstances of the case, but by the testimony of honorable witnesses, to be totally unworthy of credit.

The full history of the Hoboken affair is contained in the official documents submitted to the committee, and it may be of service to you for me to recapitulate the points of the case as concisely and yet as clearly as I can. I will remark, in advance, that the facts of this case have been fully passed upon by my superior officers.

In the winter of 1864-5, especially during the months of January, February and March, bounty-jumping had become an evil of such magnitude as to threaten the efficiency of the recruiting system.

Our armies stood on the eve of what was felt by all to be the decisive campaign of the great civil war, and it was of the first importance that our ability to reinforce them should not be impaired. This was the point of great solicitude with Mr. Lincoln and the Secretary of War, as well as of all our commanders in the field.

My Bureau was charged with the weighty task of responding to this demand, and I found that the system of lavish local bounties was leading to widespread corruption, and that states, counties, cities and towns were paying enormous sums of money for men, and the army was not receiving a corresponding increase of strength; that, in short, the bounty-jumping system was becoming one of immense magnitude and perfect organization, and that some special and extraordinary efforts were absolutely necessary to check it. The city of New York, and the cities and towns adjacent thereto, was the field in which this pernicious system of villainy was most formidable, and here it was determined to make the first attack upon it. To this end, I, on the 16th day of January, 1865, addressed a letter to the Secretary of War, which was promptly approved, asking that Colonel L. C. Baker, Chief Detective of the War Department, be put under my control for the purpose of exposing and checking the evils in question, and that the expenses of this undertaking be paid from the appropriation in my charge. Colonel Baker, with his detective force, entered at once on this duty and established himself in New York City about the 20th of January. As a part of his operations, he, with his subordinates, devised and sub-



mitted to me a plan for arresting a large number of the most notorious of these bounty-jumpers, by which it was hoped to cripple, if not end, the corrupt system, by the alarm which would be created among its participants. The details of the plan were wholly of the devising of Colonel Baker and his employes, and its execution was entrusted to them, aided by General Hinks, acting Assistant Provost Marshal General, in New York city. The scheme had my approval, and I issued, or procured such orders as Colonel Baker deemed essential to his plan of operations. It was determined by him to open a recruiting office in Hoboken, New Jersey, and Brevet Lieut.-Col. Ilges, of the regular army, then on recruiting duty in New York city, was detailed by the Adjutant General of the army to superintend the recruiting station in Hoboken, in addition to his regular duties in New York city; and Captain Mills, at Newark, the Provost Marshal of the Fifth District of New Jersey, in which Hoboken is situated, was directed by me to credit such enlistments and musters as might be certified to him by Colonel Ilges. Colonel Ilges, without any order from me to that effect,—but following, I presume, the practice he had been pursuing in New York city, under the rules for recruiting the regular army, prescribed by another Bureau,—required a deposit of \$300 of the local bounty of each recruit, as a guarantee of the good faith of the enlistment, to be retained until the recruit was receipted for at General Rendezvous.

Among the employes whom Colonel Baker called to his aid, in pursuing his detective schemes, was one Theodore Allen, of New York, of whom I had never heard up to that time, and who figured in the affair, as was subsequently disclosed, in two capacities, viz.: as aid to Colonel Baker, in detecting and arresting the scoundrels who were swindling the people, the Government, and the recruits, and at the same time participating as a substitute broker, in the business which Colonel Baker's efforts were directed to expose and prevent. For, no sooner had the Hoboken recruiting office accomplished its purpose of securing the arrest by Colonel Baker of a large number of the most



notorious bounty-jumpers than the bounty-brokering firm of Allen, Hughes & Riley, doing business in New York city, (Theodore Allen, senior partner), made the fictitious enlistment of these deserters for the purpose of their arrest, the means of a fraud more stupendous than any single one previously detected. The bounty-jumpers in question—183 in number—were enlisted by Colonel Ilges and arrested by Colonel Baker on the 10th of March, and were lodged in prison at Fort Lafayette on the night of the 11th of March. Colonel Baker reported to me in person on the 13th of March, as shown by his letter of the 16th, in evidence. He then mentioned the subject of crediting these men. I took the ground (see his letter of 16th), from which I never deviated, that such credit could not be made; but the subject being only before me in a conversational and informal way, and constituting at that interview what seemed to be a very subordinate and unimportant part of the business going on, I took no further official action at that time relating to it, than to give Col. Baker my views as expressed above. After his return to New York, Col. Baker wrote me two letters, under date of March 16th, (in evidence), received on the 17th, from which I learned that Col. Ilges had credited these men on the quota of Jersey City, it was then necessary for me to act further in the premises, and I adopted the principle, as in other cases, that these bounty-jumpers, being held to the service of the United States by previous enlistments, could not be credited to any locality as new recruits, and thus deprive the army of men to the extent of their number. I had ordered that the men be held as deserters, and I accordingly directed that they should not be credited to any locality, and as an inevitable consequence, I ordered that any money deposited for them with the recruiting officer be returned to the parties advancing it. This order I directed to be issued as soon as I received Colonel Baker's letters on the 17th, and the records in evidence show that it was in regular routine published, by one of my assistants, on the 19th. The action taken in this matter was determined upon by me before I saw Allen on the 18th, and neither by his presence or otherwise, did he in any manner influence it. Having

thus disposed of the subject, I discharged it from my mind, and when subsequently brought up, merely directed, as hereafter shown, a repetition of my orders. On the 18th, as shown by one of my telegrams, Theodore Allen appeared in my office. He urgently requested that the men be credited, and stated that he would be subjected to great trouble and probable loss unless it was done. He entered into a conversation regarding enlistment frauds generally and was particularly severe on the frauds of the Utica district, denominating that place "a perfect walk," in the cant phrase of the bounty-jumping fraternity. I told him that numerous reports received by me, through Colonel Baker and from other sources, stated the same thing; but that the Hon. Roscoe Conkling, the M. C. for that district, stoutly denied the existence of any frauds there, and maintained that the Provost Marshal and Enrolment Board were entirely honest. Allen still asseverated his convictions of great frauds there, and said he knew Aaron Richardson, the broker there, and could easily find out all about it by going to Utica. At this time I was in the midst of perplexity about this district, the Board of Enrolment being under suspension.

As Allen was still in the detective service of the Bureau under Colonel Baker, I suggested to him that he should at once proceed to Utica, and get any facts available relating to the frauds or malpractices alleged to prevail there in the business of this Bureau. I said nothing to him about connecting Roscoe Conkling with frauds nor anything else about that person than what is herein before stated. Allen then left my office, and whether he went to Utica or not, I never knew, for he never reported anything to me; and the only evidence I have that he ever visited that city is his incidental mention of the fact in his telegram of March 24th, and the statement which I do not remember to have heard until lately, that he was one of Colonel Baker's employes, who took part in the attempt to arrest Aaron Richardson, the bounty broker at Utica, which failed through the intervention of Mr. Roscoe Conkling.

I never, to my knowledge, saw Allen after he left my office on the 18th of March, until he appeared here as a witness.



There was some delay by Colonel Ilges in complying with my order, to return the money to the parties who advanced it, arising, as it was said, from a mistake in the date of the enlistments as stated in my order. This was brought to my notice by Allen's telegram of March 24th, which I treated, as I would have done a similar report from any other person, that an order had not been obeyed,—namely, repeated the order to the senior officer present—Colonel Baker; gave the name of Theodore Allen for the reported failure to obey orders, and directed the senior officer (Colonel Baker) to see that the original order was complied with. The order, as repeated, was in specific terms, and almost verbatim each time, directing that the money deposited with Colonel Ilges for the recruits be returned to the parties advancing it. I did not know who those parties were, nor did I take pains to ascertain. I was overwhelmed with other business, and this affair had then no special importance. Colonel Ilges having received the money, was of course competent to decide to whom it should be paid under the order. I left that point to be decided without dictation or interference on my part. The money was paid back, on the 24th of March, to Allen, Hughes & Riley, they being the parties who advanced it. It is but just, however, to Colonel Ilges and myself, in this connection, to state that a letter addressed by him, under date of March 21st, to Captain Wesley Owens, of my office, suggested the point that, if the money in question—\$54,000—were paid back to the parties advancing it, injustice might be done to the cities and towns that had really furnished the money, which Allen, Hughes & Riley had advanced. This letter is shown to have been received by Captain Owens on the 23rd of March, and, if it was submitted to me at all, it was, as all such correspondence at that time was, by brief or endorsement, for instructions as to how it should be answered. The official brief or endorsement showed only that it referred to the same subject on which I had already promulgated a conclusive order, and the answer, dated March 23rd, of Captain Owens to this communication merely repeats the order already given. I have no recollection of this letter having been submitted to



me at all when received; but, if submitted, it was by its brief, which is as follows :

“NEW YORK CITY, March 21, 1865.

“GUIDO ILGES, Recruiting Officer, etc.

“In reference to 183 men, mustered on the 10th of March, 1865, and credited to Jersey City. Done by order of Colonel L. C. Baker.”

As my official correspondence at that time was exceedingly voluminous, covering hundreds of letters daily, and as every energy of my Bureau was strained to provide for an anticipated need of men, which happily the fortunes of war relieved us from sending forward, it is quite obvious that it was impossible for me to read more than the briefest outline of the subject of each letter, and, in many instances, not to read them at all, but trust them to be answered by some of the numerous well-trained and efficient assistants, whom the business of my office required to be on duty. I think it highly probable that Captain Owens answered this letter without even troubling me with reading the endorsement. Such would have been proper on his part, an order on the subject having already been issued. But this point is immaterial.

On the 29th of March, however, the full force of Colonel Ilges' letter was brought to my attention by a personal interview with Hon. O. Cleveland, mayor of Jersey City, who stated that the money paid back to Allen, Hughes & Riley, belonged in reality to Jersey City, and that such payment had imperiled, if not forfeited, the rights of that city. He urged me, therefore, with all the argument and entreaty which an earnest man could use, to allow these men to be credited, insisting that, even if they were bounty-jumpers, Jersey City had paid for them in good faith through the money advanced by Allen, Hughes & Riley, and that, as by my decision the money had been returned to those men, I ought, in equity, to allow the credit, so as to relieve Jersey City. It seemed impossible for me, under the law, to allow these credits. The men were already in the military service, and my plain duty was to hold them as deserters. I did not hold my office as in any way responsible for the dealings between cities and bounty-brokers,

and could not undertake to act as umpire in disputes of that character, arising so numerously throughout the loyal States; yet, having discussed these points with Mayor Cleveland, I told him that, owing to the peculiar circumstances surrounding this case, and especially in view of the fact that the pressure of official engagements had prevented my appreciation of the suggestion in Colonel Ilges' letter of March 21st, I would use all the power of my Bureau in aiding him to recover the money from the hands of Allen, Hughes & Riley. I was the more ready and anxious to do this, because the facts narrated to me by Mayor Cleveland disclosed to me very clearly, for the first time, that Theodore Allen was acting a double part in the whole transaction. That, having been employed by Colonel Baker to induce a lot of bounty jumpers to enlist, with a view to their arrest, he had, while playing this part with Colonel Baker, assumed an entirely different role with Mayor Cleveland, and had, as a bounty-broker, sold to him as legitimate recruits, the very same men whom, as a detective, he had induced to enlist, to be entrapped as deserters. I learned further from Mayor Cleveland that the \$300 for each recruit that was deposited with Colonel Ilges was not even a moiety of what he had paid to Allen & Riley; that he had paid them about \$700 per man, and that they had in all in their possession \$126,000 of money belonging to Jersey City. These facts being revealed to me, I wrote to Colonel Baker immediately (March 29th, see the letter in evidence), instructing him to demand of Allen & Co., the restitution of the money to Jersey City—holding that, the men not being credited, it was wrong to take money in payment for them as recruits. Colonel Baker made this demand of Allen & Co., and they refused to restore the money. As soon as their refusal was known to me, I issued orders (by telegraph and letter, dated April 6th, in evidence) for their arrest and confinement in the Old Capital Prison until the money was restored. Colonel Baker was charged with the execution of this order; but Allen and his partners, scenting danger, fled to Canada, and remained as fugitives until near the close of the year—my order for their arrest being all the



time suspended over them and preventing their return to their homes. The men who thus held the money of Jersey City being beyond reach, the only alternative to be pursued by the mayor to adjust his accounts, was to procure an order to allow these bounty-jumpers to be credited to Jersey City, and thus legalize the payment of the money, and as a repugnant, but necessary consequence, confirm the \$126,000 in the possession of Allen and his partners in this transaction. Very great efforts were made from time to time to induce me to allow the credits, and while I appreciated the hardship which the train of circumstances had inflicted on Jersey City, I did not consider myself empowered with the discretion which would enable me to comply with the request. I accordingly refused to do so, and stated the grounds of my refusal in an official report to the Secretary of War, dated October 25th, 1865 (in evidence).

The case thus passed from my jurisdiction into the hands of my superior officer, who, in pursuance of the larger power which he could exercise in the premises, directed some months afterwards, in an order (in evidence) that the credits be allowed to Jersey City. This might well have appeared to the Secretary as the only available mode of adjusting the matter and relieving the corporation of Jersey City from a difficulty in which it had become unfortunately, and I presume innocently, involved. As a Bureau officer, though I might have ordered the credits without a question from any one, I did not consider myself empowered with the authority in the matter, which might be rightfully exercised by the Secretary of War. His authority in the case was absolute and unquestioned, and at the time it was exercised it did not interfere in the least with the efficiency of the recruiting system. The credits being thus allowed by the Secretary of War, my order for the arrest of Allen thereby fell to the ground, and I supposed I never should hear of the matter again. But Theodore Allen, smarting under the punishment I had inflicted on him, by making him a fugitive from justice and an absentee from his country, for the better part of a year, appears here at Mr. Conkling's instance, as a witness against me, and swears that I agreed

to release to him the \$54,000, provided he would go to Utica and hunt up accusations that would, at all hazards, connect Mr. Conkling's name with the recruiting frauds alleged to be going on at that point,—that I made this infamous proposition to him in my office, having sent my confidential clerk out of the room and put my hands upon his shoulders in a familiar way, and urged him to this course in the most persuasive manner.

At the time Allen alleges this extraordinary proposition to have been made, let it be remembered that I had never seen him but once before, and had never heard of him until a few weeks previous. Let the probability of such a procedure on my part speak for itself, and let me recall the fact that my confidential clerk at that time, Mr. M. L. DeCoursey, of Philadelphia, swears that he was on duty in my office on that day, where he was habitually stationed, and swears further that I never, on any occasion, asked him to leave the room for the purpose of holding a conversation with any one,—his business being really to stay by and hear conversations and take note of anything worthy of record. He swore further, that if I had put my hands upon any one he could not have failed to observe such an extraordinary proceeding.

Allen does not pretend that he did report anything to me against Mr. Conkling, and on the hypothesis of his own wicked invention, he leaves me in the silly attitude of having agreed to release him the \$54,000 on condition of hunting up something scandalous against Mr. Conkling, and then stupidly paying the money without getting what I bargained for. Even conceding that I was base enough to tender the \$54,000 for defamatory accusations against Mr. Conkling, I submit that I was hardly weak enough to let the money go without getting something in return. Mr. Allen never subsequently reported anything to me about Utica, or about Mr. Conkling, or about anything else, and does not even pretend that he did; he does not allege any reason for failing to report against Mr. Conkling, nor for any failure on my part to keep the agreement which he says I made.



I am at a loss which to be most astonished at, the character of Allen's testimony, or the hardihood manifested in introducing him as a witness.

Allen's whole statement is sufficiently disproved by the circumstances and by the bald impossibility of such a reckless transaction on my part, and that too, with one who was well nigh a total stranger to me. The extravagance of the amount which Allen says, or intimates, was to be released to him on condition that he would defame Mr. Conkling at "*all hazards*," is another strong point against the truth of his allegation. Men who are depraved enough to do what Allen swears he was to do, can usually be hired for a small per centage of \$54,000. And, in this connection, from a different stand point, I may remark, that Mr. Conkling exaggerates his own importance when he imagines that any one could afford \$54,000 to hunt up accusations, either true or false, against him. He will have attained far more consequence than he has yet reached in public life, before a tithe of that sum could be profitably invested, even by a reckless and wicked enemy, in detracting from his reputation.

It must be noted in examining Allen's testimony, that at the time he alleges I made this infamous bargain with him, I had never seen Mr. Conkling,—I had seen Allen but once before,—and Allen had never seen Mr. Conkling. We have Allen, then, in the attitude of a man on the stand swearing that, with a view to a pecuniary consideration, he had agreed to hunt up scandalous charges against one to whom he was a total stranger,—a confession which should at once discredit his testimony on all points. But the most extraordinary feature of this whole transaction is the fact that the very man whom he swears he agreed to defame "*at all hazards*," appears here as his patron, and asks the Committee to accept him as a credible witness, with whose testimony the reputation of another might be blackened.

I have dwelt thus at length on this Hoboken affair and on the character of Theodore Allen, judged simply by the circumstances surrounding the case, and on the basis of his own testimony. I leave you to make a proper array of the

weighty, direct evidence affecting Allen's credibility as a witness. I will allude, however, to the following facts :

1st. Colonel Wright Rives, U. S. Army, now acting as private secretary to the President of the United States, and serving on the staff of Major General John A. Dix, in New York city, during the war, testified that he knew Theodore Allen, and that his reputation for truth and veracity was bad, that he would not believe him under oath, and that he had heard Allen's character spoken of as bad by General Dix and by Colonel Van Buren and Major Joline, of General Dix's staff, and also by John A. Kennedy, Superintendent of Police in New York city. Mr. Kennedy's opinion of Allen is also contained in an official letter to General Dix, dated February 17th, 1864, in which Mr. Kennedy says :—  
 “ Theodore Allen has been known to the police of this city  
 “ for at least ten years ; his reputation in the force is that  
 “ of a thief.” I send you an official copy of this letter, and if it has not been admitted as evidence, its pertinence will certainly insure it due weight before the Committee.

Mr. Daniel Carpenter, Inspector of Police in the city of New York, next in rank to Superintendent Kennedy, testified that Allen's reputation was bad, and that he would not believe him under oath ; and ——— Petty, Captain of Police, testified to the same thing, basing his testimony on a thorough knowledge of Allen.

Hotchkiss, a constable in the city of Washington, formerly a deputy sheriff in the city of New York, testified to knowing Allen, and that he would not believe him under oath.

Testimony on this point, as you well know, could have been produced for an indefinite period of time by the summoning of other witnesses ; but, having secured the testimony of gentlemen of the highest official rank and character, connected with the Police of New York, and others, I conceived it to be of no advantage to multiply witnesses on the same point. Mr. Conkling introduced respectable witnesses, who swore that they would believe Allen under oath, a species of testimony not very conclusive as to the real character of the man and by no means an offset to the evidence against



him, by men who are professionally enabled to know facts about such men as Allen. Indeed the bulk of the testimony introduced by Mr. Conkling, to sustain Allen, only went to show that Allen's character was among the most favorable—a subject of discussion—and that his real reputation and record with the Police, were not so generally and widely known as to discredit him with everybody.

Please urge upon the Committee, with the view of having it yet admitted in evidence, if that be possible, that Allen was convicted on his plea of guilty, of larceny (pocket picking) in the court of General Sessions in New York city, on the 4th of February, 1858, and that he was sentenced for this misdemeanor to four months imprisonment in the city prison of New York. A fully authenticated copy of the record of the trial and conviction of Allen, as above, was offered, but was ruled out by the Committee, because, as I understand, his general character was not in issue.

Allen's own testimony respecting himself, elicited on cross-examination, was simply this,—that he was originally a butcher, became a dining room employee, then kept a drinking shop, then kept a gambling house, and then entered upon the business of bounty brokerage. He admitted that during the time he was engaged in the bounty brokerage, he was confined several months in Fort Lafayette by order of General Dix.

You will please notice in your plea the allusions which Mr. Conkling has made to the fact, that I have not offered myself for examination as a witness in my own behalf. Why should I have done so, or how, with propriety and self respect, could I have done so? My accusations against Mr. Conkling were specifically set forth in my letter, duly subscribed by me; I did not consider that I should have added to the force of those accusations by offering to swear to their truth. I sought to prove their entire correctness by the evidence of official papers, and I think I have succeeded. I took the same ground in effect with regard to the testimony of Theodore Allen. I was not disposed from choice to place myself in the attitude of bandying contradictions with such a man as he, and I accordingly pursued the

method of disproving his testimony by producing official records in refutation, and in addition thereto, proving that he was not to be believed on oath. You will not forget that the Committee was fully empowered to send for persons and papers, and could have called me on to the witness stand, had they desired my testimony in the investigation, *which they were directed by the House to make*; and you will further remember that you reminded Mr. Conkling of his power to call me at any time, and of my readiness to respond to his call or that of the Committee.

I desire that you will urge upon the committee the propriety of furnishing me with the specific charges against me, which Mr. Conkling proposes to have investigated. I have been rigidly confined to the text of my letter in the accusations I brought against Mr. Conkling; and it is but fair that he should be made to specify, with distinctness, what he proposes to prove against me. Up to this time I have been favored only with general denunciation from that gentleman, and with high-sounding phrases about the "carnival of corrupt disorder" which prevailed in my Bureau in Western New York. He has not come to a specific charge against me, except in the Hoboken affair, and in this his whole case rests on the uncorroborated and fully impeached testimony of Theodore Allen. Obvious as the fact is, I desire you to press it on the attention of the Committee with earnestness, (for I wish it to be made clearly manifest that Mr. Conkling has made himself the ally of Theodore Allen in this extraordinary affair. My request for a specification of charges is respectfully urged, either in the event of this Committee continuing the investigation, or in the event of that labor being transferred to another tribunal. In either event, it is my plain right to know whereof I am accused. Mr. Conkling avows that the accusations he has against me come to his knowledge nearly a year and a half ago, and had he then, while acting as Judge Advocate, or at any subsequent time, filed charges against me, with the Secretary of War, that high official, with his known zeal for the purity of the public service, would undoubtedly have had them promptly investigated. That line of manly proceeding is



still open to Mr. Conkling. He has the right as an American citizen to file charges against me as an officer of the army, and if the charges are not wholly frivolous and groundless, he well knows that an official inquiry would at once be made into their truth.

You will not represent me to the Committee as in the least degree desirous that the investigation should no longer be prosecuted by them, for I have no desire to avoid a scrutiny which I am sure would be honorable and impartial, neither will you represent me as asking a Court of Inquiry, for, as I have already stated, no charges made by Mr. Conkling are deemed by me sufficiently grave to render this step on my part either necessary or desirable.

It must be very obvious to every one, and yet I hope you will call it to the attention of the Committee, that it is easy to bring charges and "railing accusations" against a Bureau entrusted with duties so weighty and delicate, and in many respects, so obnoxious as were those pertaining to my office. I was charged with the very difficult task of recruiting one of the largest, if not the very largest army ever marshalled by a christian nation, and when voluntary enlistments were insufficient, it was my official duty to enforce a rigid conscription, and accompany these duties with the summary arrest of all deserters from the ranks, and of all who sought to avoid the draft at home. These duties brought me into contact with the noblest of my countrymen and with the vilest also, and as a necessary consequence I received the ill will of the evilly disposed throughout the land: officers who were dismissed or otherwise punished for neglect of duty; bounty brokers, imprisoned for cheating recruits; thieves and swindlers, arrested and punished through my efforts, are, by their very natures, my enemies to-day. Theodore Allens by scores, and possibly by hundreds, can be summoned to the witness stand by Mr. Conkling to swear to accusations as base and as groundless as that to which Allen has made oath; but I feel well assured that the clear records of my office will effectually bear me out in good faith, and sustain the honor of my official character at all points. But, in addition to these

records, I have the testimony of those highest in authority throughout the loyal States, and in no way under my control, certifying to the zeal, fidelity and ability with which I have discharged my responsible duties. This testimony, flattering in its terms, could only be referred to by me when forced to allude to unjustifiable assaults on my official reputation.

In a conference with President Lincoln, at one of the trying and difficult crises of the war, when a draft was feared as the signal for riot in some places, I ventured to complain to him of the obloquy which was sought to be attached to my name as the mere administrator of the law. "That is necessarily in the case for the present," he replied; "but it will be all right in the end." In that confidence I rest to-day, almost, if not quite, indifferent to the attacks which Hon. Roscoe Conkling or Mr. Theodore Allen, jointly or singly, may make upon me.

I am, sir, very respectfully,

Your obedient servant,

JAMES B. FRY.

WASHINGTON, D. C., *June 25, 1866.*



71.2009.084 08251

